

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JENRAJA SUPSURIT**

Claimant

VS.

**IBP, inc.**

Respondent

Self-Insured

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Docket No. 206,638

**ORDER**

Respondent requested Appeals Board review of Administrative Law Judge Kenneth S. Johnson's October 8, 1997, Award. The Appeals Board heard oral argument by telephone conference on April 15, 1998. Appeals Board Member Gary Korte recused himself from these proceedings, and in his place Jeff K. Cooper was appointed Appeals Board Member Pro Tem.

**APPEARANCES**

Claimant appeared by her attorney, Gary E. Patterson of Wichita, Kansas. Respondent, a qualified self-insured, appeared by its attorney, Gregory D. Worth of Lenexa, Kansas, appearing for Craig A. Posson of Dakota City, Nebraska. There were no other appearances.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and has adopted the stipulations listed in the Administrative Law Judge's Award.

**ISSUES**

The Administrative Law Judge awarded claimant permanent partial general disability benefits of 7 percent based on a permanent functional impairment for a May 16, 1995, work-related injury. Respondent contends claimant is limited to only medical compensation because claimant was not disabled for at least one week from earning full wages as required by K.S.A. 44-501(c). If claimant is not limited to only medical compensation, the

respondent argues claimant failed to present credible medical evidence to establish her permanent impairment of function.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

The Administrative Law Judge's Award should be affirmed. Specifically, claimant's treating physician, board certified neurologist Ahmad A. Anouti, M.D., took claimant off work because of her work-related neck and head injury from September 11, 1995, through September 18, 1995. Claimant testified she gave the respondent the off-work slip signed by Dr. Anouti, but respondent ignored the off-work slip and required her to report to work. After working two days, the respondent took claimant off work for three days after Dr. Anouti personally called the respondent and notified the respondent claimant should not work. The Appeals Board concludes, as evidenced by Dr. Anouti's off-work slip, claimant's work-related injuries disabled her for at least one week from earning full wages. Therefore, claimant is not limited to only medical compensation as required by K.S.A. 44-501(c).

Dr. Anouti was the only physician who testified and expressed an opinion on claimant's permanent functional impairment as a result of her work-related injury. Dr. Anouti opined claimant had a 10 percent permanent impairment of function related to her headaches and a 5 percent permanent impairment of function related to her dizziness. Dr. Anouti diagnosed claimant with post-traumatic headaches and vertigo. Dr. Anouti, on cross-examination, acknowledged his 10 percent permanent impairment of function opinion based on claimant's chronic headaches was his own personal opinion and was not contained in the AMA Guides to the Evaluation of Permanent Impairment, Third Edition (Revised). The Appeals Board is mindful that functional impairment is required to be based on the AMA Guides, if the impairment is contained therein. See K.S.A. 44-510e(a). However, as in this case, the Appeals Board concludes the physician is free to express his personal opinion of functional impairment if the impairment is not contained in the AMA Guides. Dr. Anouti was familiar with claimant's injuries as he treated claimant for almost two years. Also, Dr. Anouti, being a board-certified neurologist, has the background, experience, and education to express such an opinion.

Additionally, Dr. Anouti opined claimant had a 5 percent impairment of function for her dizziness which he diagnosed as vertigo. Dr. Anouti did express that opinion in accordance with the AMA Guides. As previously noted, Dr. Anouti was the only physician who expressed an opinion in regard to claimant's permanent functional impairment as a result of her work-related neck and head injury. Therefore, Dr. Anouti's opinion was uncontradicted and uncontradicted evidence which is not improbable or unreasonable cannot be disregarded by the fact finder unless it is shown to be untrustworthy. There is

no evidence in the record that such opinion was untrustworthy. See Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, Syl. ¶ 5, 573 P.2d 1036 (1978).

Although Dr. Anouti found claimant had a functional impairment rating of 15 percent, the Administrative Law Judge found this permanent functional impairment rating was excessive and not entirely supported by the evidence. The Administrative Law Judge went on to find that claimant's appropriate functional impairment rating was 7 percent. Since the extent of disability of an injured worker is a question of fact, the fact finder is free to consider all of the evidence and decide for itself the percentage of disability. The numbers testified to by the physicians are not absolutely controlling. See Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).

The Appeals Board also finds the record as a whole does not support a functional impairment rating of 15 percent. Therefore, the Appeals Board concludes the Administrative Law Judge's 7 percent finding is the appropriate assessment of claimant's permanent partial general disability.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Kenneth S. Johnson's October 8, 1997, Award should be, and is hereby, affirmed in all respects.

### **IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1998.

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BOARD MEMBER PRO TEM

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BOARD MEMBER

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BOARD MEMBER

c: Gary E. Patterson, Wichita, KS  
Gregory D. Worth, Lenexa, KS  
Kenneth S. Johnson, Administrative Law Judge  
Philip S. Harness, Director

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